

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 957 of 2006

Smt. Shama Paraveen w/o Sri Ikran Hussain
D/o Sri Quyyum r/o Line No. 8 Azad Nagar
Haldwani

..Applicant

Versus

1. Ikram Hussain s/o Nabi Hussain
Mohalla Katoratal, Kashipur,
District Udham Singh Nagar
2. State of Uttaranchal

.....Respondents

Dated: 30.11.06

Hon'ble Rajesh Tandon, J.

Heard Sri T.A. Khan counsel for the applicants and learned A.G.A. for the respondents.

By the present application under section 482 Cr.P.C. the applicants have prayed for quashing the proceedings in criminal case No. 1321/2006 under sections 406 I.P.C. pending in the court of Addl. Judicial Magistrate, Kashipur.

Briefly stated, applicant was married with the opposite party no. 1 about 20 years ago. The complaint was lodged by the applicant against the respondent no. 1 under section 156 (3) Cr.P.C. on the ground that the respondent treated her with cruelty. The learned Magistrate directed the police to investigate the case. The police has submitted charge sheet in the case after investigation.

The applicant has submitted that in view to take revenge from the applicant, the respondent no. 1 has filed a false complaint against the applicant in the Court of Addl. Chief Judicial Magistrate, Kaishipur. The learned Magistrate after recording the statement of the complainant under section 200 Cr.P.C. and his witnesses under section 202 Cr.P.C. took cognizance and issued summon to the applicant.

In view of the above, I am not observing anything on the merits of the controversy. The magistrate has taken cognizance under section 406 I.P.C.

So far as the instant petition under section 482 Cr.P.C. is concerned no interference can be made under section 482 Cr.P.C. as both the parties will be at liberty to lead the evidence in view of the observations made by the Apex Court in the case *Medchl Chemicals and Pharma (P) Ltd. v. Biological E. Ltd. and others* (2003) 3 SCC 269.

Since the trial has to take place for the offences under aforesaid sections, therefore, without expressing any opinion on the merits of the case, I direct the applicants to appear before the concerned Presiding Officer. The Court shall permit them to file appearance bonds to the satisfaction of the Magistrate concerned for their regular appearance in the case.

Subject to the observations made above, application under Section 482 Cr.P.C. is dismissed.

(Rajesh Tandon, J.)

Dated: 30.11.2006

*Dhyani